IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2249 OF 2004

IN

APPEAL NO.112 OF 2004

IN

SUMMARY SUIT NO.10 OF 1991

...

Vijaya Bank ...Appellants

v/s.

M/s.A.K.Metal Corporation

and ors. ...Respondents

...

Mr.Sanjeev Kanchan i/b Sanjeev Kanchan & Co. for the Appellants.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 16TH AUGUST, 2007

P.C.:

1. This Notice of Motion is taken out by the

Plaintiff for restoration of the Appeal, which was preferred against the order dated 10th April, 2003 dismissing the suit under Rule 227 of the Original Side Rules. This motion is taken out in the year 2004. Respondents Nos. 4 & 5 who are original Defendants Nos.4 & 5 are not served. The learned Counsel appearing for the Plaintiff seeks leave to delete their names.

2. Their names are permitted to be deleted. If the name of Defendant No.5 is deleted, in our opinion, there is no point in restoring the suit, because subject matter of the suit is bill of lading which was drawn by Defendant No.1 on the Defendant No.5. Defendant No.5 is thus a necessary party to the suit and therefore in his absence the suit cannot proceed. Therefore, if the Defendant No.5 is being deleted, there is no point in restoring the Appeal. Motion is, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)